

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA,

v.

CLYDE DALE EVANS,

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Criminal Case No. **3:05-CR-113-L (03)**

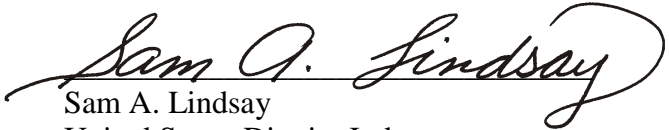
ORDER

On June 28, 2016, Magistrate Judge Paul D. Stickney entered the Findings, Conclusions and Recommendation of the United States Magistrate Judge (“Report”) (Doc. 261) recommending that Defendant’s Motion to Reduce Sentence Under *Johnson v. United States* (Doc. 260) be construed as a successive habeas petition under 28 U.S.C. § 2255 and transferred to the United States Court of Appeals for the Fifth Circuit. No objections to the Report were received as of the date of this order.

When a petition is deemed successive, the district court lacks subject matter jurisdiction unless a panel of the Fifth Circuit allows the successive petition to proceed. After reviewing the motion, record in this case, and Report, the court determines that the findings and conclusions of the magistrate judge are correct, and **accepts** them as those of the court. Accordingly, the court **directs** the clerk of the court to **transfer** the habeas petition in this case (Doc. 260) to the Fifth Circuit for determination, and **dismisses** this action for lack of subject matter jurisdiction.¹

¹ An order transferring a successive application to the court of appeals is not a final order requiring a certificate of appealability. *See United States v. Fulton*, 780 F.3d 683, 688 (5th Cir. 2015).

It is so ordered this 28th day of July, 2016.


Sam A. Lindsay
United States District Judge